

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**WILLIAM TYRELL HEYWARD BEY,**

**Plaintiff,**

**v.**

**CHANEL JOHNSON, et al.,**

**Defendants.**

**Civ. No. 19-15588 (ES) (ESK)**

**ORDER**

**McNULTY, DISTRICT JUDGE**

**THIS MATTER** having come before the court on the motion of defendants Chanel Johnson and Ronald Fusco (DE 30) to dismiss pursuant to Federal Rule of Civil Procedure 37; and

**IT APPEARING** that plaintiff has not responded to the motion; and

**IT APPEARING** that the Hon. Edward Kiel, U.S. Magistrate Judge, to whom the motion to dismiss was referred, has carefully analyzed the case and filed a Report and Recommendation (“R&R”) that the motion to dismiss be granted, that the amended complaint be dismissed without prejudice, and that plaintiff be given 30 days to show cause why the amended complaint should not be dismissed with prejudice (DE 31); and

**IT APPEARING** that no objection to the R&R has been filed within 14 days or thereafter, *see* Fed. R. Civ. P. 72(b); L. Civ. R. 72.1c(2); and

**IT APPEARING** that the motion to dismiss is based on plaintiff’s failure to provide discovery and comply with the Court’s November 12, 2020 Order directing Plaintiff to respond to certain discovery; and

**IT APPEARING** that, Judge Kiel evaluated the motion to dismiss under Federal Rule of Civil Procedure 41(b) and soundly concluded that the *Poulis* factors warranted dismissal of the amended complaint; and

the matter having been reassigned to me for purposes of this motion, and the Court finding itself in substantial agreement with, and therefore adopting, Judge Kiel's cogent and well-reasoned R&R;

IT IS this 11th day of February 2021,

**ORDERED** that the R&R is AFFIRMED pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b)(3)<sup>1</sup>; and is further

**ORDERED** that the motion to dismiss (DE 30) is GRANTED, and plaintiff's amended complaint is dismissed *without prejudice*; and it is further

**ORDERED** that plaintiff shall have 30 days from entry of this Order to show cause why the amended complaint should not be dismissed with prejudice; and it is further

**ORDERED** that the pending motion to dismiss (DE 21) pursuant to Federal Rule 12(b)(6) shall be ADMINISTRATIVELY TERMINATED.

/s/ Kevin McNulty

**Kevin McNulty, U.S.D.J.**

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<sup>1</sup> "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also U.S. v. Raddatz*, 447 U.S. 667, 680 (1980) (stating that the district court judge has broad discretion in accepting or rejecting the magistrate's recommendation).